IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

WRIT PETITION NO. 98 OF 2002

1. Mr. Adolf Fernandes,
   major,

2. Mr. Ghanashyam Canconker,
   major,

3. Smt. Carmina Mascarenhas,
   major, all r/o Mitra Bazar,
   Caranzalem, Goa. ... Petitioners.

versus

1. The State of Goa,
   through its Chief Secretary,
   Secretariat, Panaji, Goa.

2. The North Goa Planning and
   Development Authority,
   with office at Mala,
   Panaji, Goa through its
   Member Secretary.

3. Panjim Municipal Council,
   through its Chief Officer,
   Panaji, Goa.

4. Goa State Pollution
   Control Board, through its
   Member Secretary
   with office at Patto,
   Panaji, Goa.

5. Directorate of Fire Services,
   through its Director,
   with office at St. Inez,
   Panaji, Goa.

6. The Directorate of Health Services,
   through its Director,
   Campal, Panaji, Goa.

7. The Chief Electrical Engineer,
   Electricity Department,
   Vidyut Bhavan, 3rd floor,
   Panaji, Goa.

8. Smt. Fatima S. Barreto Fernandes,
   Opp. Bruno Bakery,
   r/o Capelwado, Caranzalem, Goa.

9. M/s Models Constructions Pvt.Ltd.
Joffre Residency, 4th floor,
Behind College of Pharmacy,
St. Inez, Panaji, Goa.

10. The Archdiocese of Goa,
through its Procurator,
Paco Patriarcal,
Altinho, Panaji, Goa. ... Respondents.

Mrs. A. A. Agni, Advocate for the Petitioners.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. D. Naik, Additional Government Advocate for the Respondent Nos.1, 6 and 7.

Mr. A. F. Diniz, Advocate for the Respondent No.3.

Mr. M. S. Sonak, Advocate for the Respondent Nos.8 and 9.

Mr. S. Karpe, Advocate for the Respondent No.10.

CORAM: V. C. DAGA &
P. V. HARDAS,JJ.

DATED: 19TH JUNE, 2002.

ORAL ORDER

Heard parties. Perused record.

2. This Petition is directed against the permissions and approvals granted by Respondent Nos.2 and 3 to the Respondent Nos.8 and 9 on 15-3-99, 2-11-99 and 29-11-99 respectively to develop their property by constructing building complex consisting of eight buildings.

3. This Petition appears to have been filed some time in the first week of March, 2002 in the nature of Public Interest Litigation. During this period, as per building permit, construction of eight buildings, each

building having four upper floors have come up. The substantive relief claimed by the Petitioners is that by withdrawing the licences and/or building permits the buildings which have been occupied by the occupants should be demolished and removed from the site.

4. Having gone through the Petition, we find there is absolutely no explanation explaining delay and laches in approaching this Court. During this period of delay, the third party interests has been created in favour of the occupants of the apartments located in the said buildings. Most of the occupants have occupied their flats purchased by them. Now, the builder is not the only person who is going to be affected but the other occupants would be the direct victims if this Petition is entertained at this belated stage.

5. **In Tilokchand Motichand and others** v. **H. B. Munshi,** AIR 1970 S.C. 898, it was observed by the Apex Court that party claiming relief must move the Court before other rights come into existence. The action of the Court cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court. It was explained in **N. S. Mehta** v. **Union of India and others.** AIR 1977 S.C. 1673, how delay in invoking the jurisdiction of the Court, which may create equitable rights of others, may give rational grounds for

discrimination so that it would cease to be a case of any violation of Article 14 at all. In **State of Orissa** v. **P. Samantaray and others,** AIR 1976 S.C. 2617, it was held that Writ Petition was liable to be dismissed on ground of inordinate and unexplained delay. In view of the law laid down by the Apex Court, this Petition is liable to be dismissed on this count alone.

6. Apart from the above, various documents and complaints are referred in the Petition but there is no disclosure in the Petition as to how and when these documents were procured by the Petitioners. No source of information has been disclosed in their verification. Consequently, it is clear that the Affidavit in support of the Petition is absolutely vague.

7. It is needless to observe that the Affidavit filed should be precise and clear. For proper verification of an Affidavit or a Petition based on certain information, the source should be clearly indicated. If the averments in the Affidavit are not based on personal knowledge, the source of information must be disclosed as held by the Apex Court in the case of **Barium Chemicals Ltd.** v. **Company Law Board and others,** AIR 1967 S.C. 295. On this count also this Petition deserves to be dismissed.

8. Apart from this, in the year 1999, Writ Petition

No. 368 of 1999 was filed challenging the legality of the very same construction, may be on some other grounds. This Petition was heard by this Court and the same was dismissed in limine by Order dated 31st January, 2000, wherein liberty was granted to the Petitioners in that Petition to take any other remedy as may be available in law to redress their grievances. We have been informed by Mr. M. S. Sonak, learned Advocate appearing for the Respondent Nos.8 and 9 that in pursuance of the said liberty no suit has been filed against his clients till today. It appears that instead of filing the suit present Petitioners were brought on the scene and the present Petition has been filed through them in the month of March, 2002. It is not difficult to notice that the Petitioners are not the bonafide litigants seeking to invoke the jurisdiction of this Court alleged to be in public interest.

9. The Apex Court in the matter of **Narmada Bachao Andolan** v. **Union of India and others**, (2000) 10 S.C.C. 664 has said thus;-

> "Public interest litigation(PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largesse in the form of licences, protecting

> environment and the like. But the balloon should not be inflated so much that it bursts. Public interest litigation should not be allowed to degenerate to becoming publicity interest litigation or private inquisitiveness litigation".

10. We are of the opinion that the present Petition can hardly be said to be a Public Interest Litigation. The present Petition is nothing but a clear abuse of process of law. Public Interest Litigation cannot be used to remove distress of any particular individual. A judicial process should not be allowed to be used for satisfaction of individual whims, pious though they may apparently look. If Petitioner is found to be acting for personal gain or private profits or out of political motives or other oblique consideration the Courts should not allow itself to be activised at the instance of such persons and must reject their application at the threshold, whether in the form of letter addressed to the Court or even in the form of regular Writ Petition filed in Court as held by the Apex Court in the case of **S. P. Gupte and others** v. **President of India and others**, A.I.R. 1982 S.C. 149. In this view of the matter, this Petition is liable to be dismissed not being a Public Interest Litigation as sought to be projected.

11. Apart from this, the present Petition also involves disputed questions of fact. Since we are dismissing this Petition at the threshold, we do not

propose to dwell on the merits of the contentions raised by the Petitioners.

12. As observed by us, this is not a bonafide litigation instituted by the Petitioners. Mere dismissal simplicitor would not serve the ends of Justice. The growing tendency to abuse the process of law in the garb of Public Interest Litigation needs to be arrested.

13. This Petition is, therefore, dimissed in limine for the reasons stated, subject to payment of costs by each Petitioner separately quantified in the sum of Rs.5000/-. Costs to be deposited within fifteen days from today with the State Legal Authority under intimation to the Respondents. It will be open to the Respondents to bring to the notice of this Court failure on the part of the Petitioners to deposit the amount of costs within stipulated period so as to enable this Court to take appropriate steps in this behalf.

V. C. DAGA, J.

P. V. HARDAS, J.

RD.